S. B. No.

By: SB. NO.

A BILL TO BE ENTITLED

An Act creating the Texas State Board of Landscape Irrigation; defining the terms landscape irrigation system, component parts, landscape irrigator, any location, installation of underground sprinkler systems and/or landscape irrigation systems; Board; providing for exemption for certain persons in professions or other types of endeavor; creating a Board consisting of six members who shall be citizens of the United States and residents of Texas; prescribing qualifications for membership on the Board; providing method of appointment and prescribing term of office; defining a quorum of said Board; providing for and prescribing oath of office; prescribing powers and duties of the Board; authorizing the Board to adopt rules and regulations; providing for compensation and travel allowance; providing that no expense of administration of the Act shall ever be charged against the general fund of the State of Texas; prescribing qualifications for licensees; providing for examination and prescribing fees; prescribing for licenses and method of revocation and reissuance; providing for a grandfather clause; providing for notification to local boards of health; providing for a criminal penalty for one in violation of this Act to be fined the sum of \$100.00 and further providing that each day said violation continues shall be deemed a separate offense in violation of this Act; providing for an injunction in addition to the criminal penalty, enjoining anyone in violation of the Act; providing that cities and towns may prescribe rules and regulations; prescribing for appeal from Board Order; providing a saving and severability clause; repealing laws in conflict with a proviso; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. This act shall be known and may be cited as the Landscape Irrigation Act of 1973.

DEFINITIONS

- SECTION 2. The following terms as used hereinafter in this act shall have the following definitions:
- A. "Landscape irrigation system" shall mean any assembly of component parts permanently installed with and for the controlled distribution of water for the purposes of irrigating any and all types of landscape vegetation, in any location, for dust reduction, or for erosion control.
- B. A "landscape irrigator" shall be any person duly licensed by the State of Texas under this act, who has and shall

maintain a regular place of business, who, by himself, or themselves, or through a person or persons in their employ, sell design, consult, install, maintain, alter, repair or service any landscape irrigation system, including connections in and to any private or public, potable water supply or water supply system. The word or term "Board" as used in this act means the Texas State Board of Landscape Irrigation, hereinafter created. EXEMPTIONS SECTION 3. The following acts, work and conduct shall be expressly permitted without license: A. Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him as his home; Irrigation or yard sprinkler work done by anyone who в. is regularly employed as or acting as a maintenance man incidental to and in consideration with the business in which he is employed or engaged, and who does not engage in the occupation of landscape irrigator or yard sprinkler contractor or maintenance for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of landscape irrigator or yard sprinkler construction or maintenance for the general public; and landscape irrigation

- Irrigation or yard sprinkler work or any other services Ε. authorized by this Act done by a licensed professional engineer as defined by the laws of this State.

- and yard sprinkler construction or maintenance done by persons engaged by any public service company in the laying, maintenance and operation of its service lines or mains and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances.
 - Any agricultural irrigation, portable or solid set. D.

garden hose, hose sprinklers, soaker hoses and agricultural

irrigation.

Any temporary or portable watering devices such as

F. Any person having a license under and by virtue of Acts 1969, 61st Legislature, Page 1516, Chapter 457 and known and cited as Article 249c of the Revised Civil Statutes of Texas, and all amendments thereto.

OF LANDSCAPE IRRIGATION

EECTION 4. There is hereby created the Texas State Board of Landscape Irrigation which shall consist of six members, each of whom shall be a citizen of the United States and a resident of this State. All members of the Board and their successors shall be appointed by the Governor and confirmed by the Senate, and shall hold office for terms of six years, or until their successors are appointed and have qualified; except the members of the Board first appointed shall hold office, two for two years, two for four years, and two for six years as determined by the Governor in making said appointments. In addition to the above qualifications, all appointments to this Board, the first appointments inclusive, and all subsequent appointments shall have as a pre-requisite to their appointment the following qualifications:

Two members of the Board shall have had a minimum of ten years' experience as landscape irrigators, two members shall have had at least eight years' experience as landscape irrigators, and two members shall have had at least six years' experience as landscape irrigators.

SECTION 5. The Board shall administer the provisions of this Act. The Board shall formally elect a Chairman and a Secretary-Treasurer from its members and may adopt such rules as it deems necessary for the orderly conduct of its affairs. The Board is hereby authorized and empowered to employ, promote and discharge such assistants and employees as it may deem necessary to properly carry out the intent and purposes of this Act, and to fix and pay their compensation and salaries and to provide for their duties and the terms of their employment. A majority of the Board shall constitute a quorum for the transaction of

business. The Board shall have a seal which shall be judicially noticed. The Board shall keep records of all proceedings and actions by and before the Board. The Board is hereby authorized, empowered and directed to prescribe, amend and enforce rules and regulations consistent with this Act for the examination and licensing of landscape irrigators and said Board shall for that purpose appoint an employee or employees thereof, with the power of removal, as a landscape irrigator examiner or examiners, whose duty shall be to examine, as to their fitness and qualifications, all persons applying to the Board for license to engage in the business, trade or calling of landscape irrigators or lawn sprinker companies and to promptly certify the result thereof to said Texas State Board of Landscape Irrigation.

SECTION 6. Members of the Board shall not receive any fixed salary for their services, but each member shall be allowed for each and every day in attending the meetings of the Board, the

salary for their services, but each member shall be allowed for each and every day in attending the meetings of the Board, the sum of \$20.00, including time spent in travel to and from such meetings, and said members shall be allowed traveling and other necessary expense while in the performance of official duty, to be evidenced by vouchers approved by the Chairman or Secretary of the Board; providing no member shall receive more than \$500.00 annually, exclusive of expenses. The members of the Board shall qualify by taking the Constitutional oath of office before an officer authorized to administer oaths within this State, and, upon presentation of such oath of office, together with the certificate of their appointment, the Secretary of State shall issue commissions to them, which shall be evidence of their authority to act as such.

SECTION 7. All sums of money paid to the Board under the provisions of this Act shall be deposited in the Treasury of the State of Texas, and placed in a special fund to be known as the "Texas State Board of Landscape Irrigation Fund". All expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the general appropriation Bill. Provided, however, that no expense incurred

- 4 -

under this Act shall ever be a charge against the general funds of the State of Texas.

of good moral character as have, by a uniform, reasonable examination, shown themselves fit, competent and qualified to engage in the business, trade or calling of a landscape irrigator, designer or consultant, as the case may be.

SECTION 9. The Board shall have power to revoke any ligant

The Board shall have power to revoke any license issued hereunder if the same was obtained through error or fraud, or if the recipient thereof is shown to be incompetent or shall have willfully, negligently or arbitrarily violated municipal rules or ordinances regulating sanitation, drainage and plumbing; provided, however, that before any license shall be revoked, the holder hereof shall have written notice enumerating the charges against him, and shall be given a hearing by said Board, and have an opportunity to produce testimony in his behalf, at a time and place specified in said notice, which time shall be not less than twenty days after the service thereof. The Board shall have power to appoint, by an order in writing, any competent person to take testimony in such hearing, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses, and the decision of the Board shall be based upon its examination of the testimony taken and the records produced. person whose license has been revoked may, after the expiration of two years from the date of such revocation, but not before, apply for a new license.

SECTION 10. All landscape irrigators and yard sprinkler construction firms or persons, as the case may be, in this State and presently acting in the capacity and doing business as a landscape irrigator or yard sprinkler construction firm, or person at the time this Act takes effect, may, within one-hundred and eighty days thereafter, procure a license as a landscape irrigator without examination, upon payment of the license fee hereinafter required. Every person applying after the expiration of said

one-hundred and eighty days shall be required to take the examination herein provided for, and satisfy said Board as to his, her or their qualifications and competency.

Licenses issued by the Board shall be valid throughout SECTION 11. the State, but shall not be assignable or transferable. shall forward to the local Board of Health, if there be one, of each town, or to the other authority having control of the enforcement of regulations relative to the water supplies and plumbing in each town, the names and addresses of all persons in such town to whom such licenses have been granted. Licenses shall be issued for one year and may be renewed annually on or before October 1st upon payment of the required fee. of failure to renew a license as aforesaid on or before October 1st in any year, the person named therein may, upon payment of the said fee and a deferred renewal fee of \$150.00, increased by such additional fees as would have been payable had such license been continuously renewed, receive a deferred renewal thereof, which shall expire on the ensuing 1st day of October; provided that such renewal license shall not constitute its holder a license for any period preceding its issue.

FEES

SECTION 12. The following shall be the maximum fees charged under this Act by the Board, to-wit:

Landscape Irrigators License - \$100.00

Renewal of Landscape
Irrigators License - \$100.00

Deferred Renewal Fee - \$150.00

SECTION 13. After the expiration of one-hundred and eighty days from the effective date of this Act, no person shall engage in, work at or conduct the business of landscape irrigation, or yard sprinkler construction or repairing in this State, except as herein specifically exempted from the provisions of this Act, unless such person is the holder of a valid license as provided for by this Act; and after the expiration of one-hundred and eighty days from the effective date of this Act, it shall be unlawful for any person to engage in, work at, or conduct the

business of a landscape irrigator unless such person is the holder of a valid license issued under the provisions of this Act and provided for hereby; and it shall be unlawful for any person, firm or corporation to engage in or work at the business of installing an irrigation or sprinkler system and doing such irrigation or sprinkler system work except as specifically herein provided unless such installation of irrigation and sprinkling system work be done under the supervision and control of a landscape irrigator licensed under this Act. Provided, however, nothing in this Act shall prohibit a corporation maintaining an established business at one or more locations in this State from engaging in the business or trade of selling, designing, repairing or servicing any landscape irrigation system or offering for sale or selling landscape irrigation systems and all or any materials, appliances or component parts thereof at retail, provided that such corporation shall employ a person licensed under this Act in one of such business locations.

CRIMINAL PENALTY

SECTION 14. Any person, firm, association of persons, corporation, partnership, designer or consultant engaged in, working at, or conducting the business of landscape irrigator or lawn sprinkler installer, as defined by this Act, without license as provided by law, shall be deemed guilty of a misdemeanor and upon conviction hereof shall be fined in any sum not to exceed \$100.00. Each day that said violation shall continue shall be deemed a separate offense in violation of this Act.

SECTION 15. Every city, town and village in this State may, by ordinance or by law, prescribe rules and regulations for the materials, construction, alteration and inspection of all pipes, faucets, tanks, valves and other fixtures by or through which a supply of water is used or carried; and provide that they should not be placed in any building therein except in accordance with such rules and regulations; and shall further provide that no landscape, irrigation or yard sprinkling construction shall be

done except in case of normal maintenance, repairs to damages or revisions, without a permit first being issued therefor upon such terms and conditions as said city, town or village shall prescribe.

INJUNCTION

SECTION 16.

- In addition to the criminal penalty hereinabove set out, any person, firm, partnership, association, corporation, designer, planner or consultant who shall operate to hold himself, themselves, or itself out to be a landscape irrigator without first procuring such license as required and provided for in this Act, may be enjoined from unlawfully pursuing such business or occupation, and the Attorney General shall bring suit for such purpose in the name of the State of Texas in Travis County, and the District or County Attorney or any county wherein such person, firm, association, partnership, corporation, designer, consultant or planner engages in such business or conducts such business in violation of this Act is hereby authorized to maintain in the proper court of said county a suit in the name of the State of Texas to enjoin and prevent such individuals, whether corporation or others, from unlawfully pursuing such occupation. In all such cases it shall not be necessary for the Attorney bringing suit to verify the pleadings or for the State to execute any bond as a condition precedent to the issuing of any injunction or restraining order hereunder.
- B. Any license issued under this Act may be revoked by the Board upon a finding by the Board that the holder of such license has been convicted of violating any of the laws of the United States or this State involving moral turpitude or is guilty of violating any of the provisions of this Act; provided, however, the holder of such license shall be entitled to notice, and such notice shall contain a statement which will accurately apprise such license holder of that of which he is accused and shall set the time for hearing not sooner than thirty (30) days after the date of mailing of such notice, and such license holder

shall be entitled to be present at the hearing and represented by an attorney. All notices under this section shall be mailed to the last known address of the license holder as reflected in the license holder's file by certified or registered mail.

APPEAL

SECTION 17.

- A. Any person aggrieved by any decision of the Board relating to the issuance, denial, revocation, or refusal to renew a license may, within sixty (60) days after the date of the decision, appeal by filing a petition in the District Court of Travis County, Texas.
- B. Any person affected or aggrieved by any rule or regulation promulgated under this Act may sue in the District Court of Travis County, Texas, for a declaratory judgment as to the validity of the rule or regulation or the validity of its application to him. Process shall be served on the Attorney General and the Chairman of the Board. The provisions of the Uniform Declaratory Judgment Act (Article 2524-1, Vernon's Texas Civil Statutes) apply to the extent they may be made applicable.

SEVERABILITY

SECTION 18. If any word, phrase, clause, sentence or part of this Act shall be held by any Court of competent jurisdiction to be invalid or unconstitutional, or for other reasons void or unconstitutional, it shall not affect any other word, phrase, clause, sentence or part of this Act, it being the express intention of the Legislature to enact such Act without respect to such action or part so held to be invalid, and such remaining portion shall remain in full force and effect.

REPEAL OF CONFLICTING LEGISLATION WITH PROVISO

SECTION 19. All laws or parts of laws in conflict with the provisions of this Act shall be, and the same are, hereby repealed, provided, however, that this Act shall not be construed as repealing or amending any laws affecting or regulating any other profession.

EMERGENCY CLAUSE

SECTION 20. The fact that the public health and welfare may be endangered by incompetent persons connecting into or onto a potable water supply, and by such reason may contaminate the drinking water of the citizens of this State creates a grave emergency and an imperative public necessity that the constitutional rule prohibiting the final passage of a bill during the first sixty (60) days of a regular legislative session and that the constitutional rule requiring bills to be read on three several days in each House be suspended, and said rules are hereby suspended and that this Act be effective from and after the date of its passage, and it is so enacted.

Austin, Texas

April 25 , 19 73

Honorable William P. Hobby
President of the Senate

Sir:

We, your Committee on ______ Natural Resources
to which was referred ______ S.B. No. 237 ____, have had the same
under consideration, and I am instructed to report it back to
the Senate with the recommendation that it do ______
pass _____ as amended ______ and be ______ printed.

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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

April 26, 1973

Honorable O. H. "Ike" Harris State Senator The Texas Senate Austin, Texas 78701

In Re: Committee Amendments to

Senate Bill No. 237 By: Harris, et al

Sir:

In response to your request and pursuant to Senate Rule 94, Subsection (g), this office finds the fiscal implications of Committee Amendments to Senate Bill No. 237 (relating to the regulation and licensing of landscape irrigators and to the title, functions, and duties of the Texas State Board of Landscape Architects) to be as follows:

- 1. The bill makes no appropriation but authorizes legislative appropriations to implement the provisions of the bill.
- 2. Income collected under the provisions of the bill would be deposited in a special fund. The Board would set fees within maximums established by the bill. Therefore, no estimate of income is available.
- 3. The additional cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Costs
1974	\$ 16,736
1975	17,358
1976	18,225
1977	19,136
1978	20,092

4. Similar annual costs will continue as long as the provisions of the bill are in effect.

Thomas M. Keel

Legislative Budget Director

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FLOOR AMENDMENT NO. _________

BY: Mus

Amend the Committee Substitute for Senate Bill 237 by adding a new section (c) immediately following sub-paragraph "(2) (c)" of Section 5, and section (c) to read as follows:

"Any landscape architect licensed under this

Act shall not have to be licensed as a landscape
irrigator in order to perform the necessary services
for design, construction, repair and installation of
any landscape irrigation system."

ADOPTED

MAY 4 1973

SECRETARY OF SENATE

COMMITTEE AMENDMENT NO. 21

Jones

Amend S. B. 237 by striking all below the enacting clause and substituting the following:

Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. As used in this Act:

- "(a) 'Landscape Architecture' means a person licensed to practice or teach landscape architecture in this state as provided herein.
- "(b) 'Landscape Architecture' means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings, including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include any services or functions within the definition of the practice of Engineering, Public Surveying, or Architecture as defined by the laws of this state.
- "(c) 'Board' means the Texas State Board of Landscape Architects, as created and provided for in this Act.
- "(d) 'Person' means a natural person except where otherwise specifically indicated.
- "(e) 'Secretary' means the executive secretary of the board as herein provided.

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- "(f) 'Landscape irrigation system' means any assembly of component parts permanently installed with and for the controlled distribution of water for the purpose of irrigating any and all types of landscape vegetation, in any location, or for the purpose of dust reduction or erosion control.
- "(g) 'Landscape Trrigator' means a person, corporation, partnership, or other legal entity duly licensed in this state under this Act, who has and shall maintain a regular place of business, and who, by himself, or through a person or persons in his employ, sells, designs, consults, installs, maintains, alters, repairs, or services any landscape irrigation system or yard sprinkler system including connections in and to any private or public potable water supply or water supply system.

"Section 2. EXEMPTIONS. "(a) The provisions of this Act do not apply to nor affect laws relating to:

- "(1) A registered professional engineer, building designer, land surveyor, nurseryman, and architect (except landscape architect) respectively;
- "(2) Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him as his home;
- "(3) Irrigation or yard sprinkler work done by anyone who is regularly employed as or acting as a maintenance man incidental to and in consideration with the business in which he is employed or engaged, and who does not engage in the occupation of landscape irrigator or yard sprinkler contractor or maintenance for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of landscape irrigator or yard sprinkler construction or maintenance for the general public; and landscape

irrigation and yard sprinkler construction or maintenance done by persons engaged by any public service company in the laying, maintenance and operation of its service lines or mains and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances;

- "(4) Any temporary or portable watering devices such as garden hose, hose sprinklers, soaker hoses and agricultural irrigation;
 - "(5) Any agricultural irrigation, portable or solid set;/
- "(6) Irrigation or yard sprinkler work or any other services authorized by this Act done by a licensed professional engineer as defined by the laws of this state.
- "(b) Every agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, grader or cultivator of land and any person making plans for property owned by himself is exempt from registration under the provisions of this Act, provided however, none of the foregoing shall use the title or term 'landscape architect,' or 'landscape irrigator,' in any sign, card, listing, advertisement or represent himself to be a 'landscape architect,' or a 'landscape irrigator,' without complying with the provisions of this Act.

"Section 3. TEXAS STATE BOARD OF LANDSCAPE ARCHITECTS.

Architects, which Board shall consist of six members, each of whom shall be a citizen of the United States and a resident of this State. Members of the board and their successors shall be appointed by the Governor with the advice and consent of the Senate; three members shall be individuals who have been actively engaged in the practice of landscape architecture for a period of not less than 10 years prior to the date of their appointment, and three members shall be individuals who have been actively engaged in the practice of landscape irrigation who shall have had respectively at least a minumum

Jed Swan

of 10 years, 8 years and 6 years experience as landscape irrigators.

"The membership of the board, except the initial/members, shall consist of three landscape architects and three landscape irrigators licensed under the provisions of this Act. The three present members of the board shall serve and hold office pursuant to the terms of their one member for two years; one member for four respective appointments. years; and, one member for six years from the date of their appointment or until their successors are duly appointed and qualified. The Governor shall appoint three additional members to the board, who shall be landscape irrigators, on August 31, 1973, to serve the following terms: member for two years; one member for four years; and one member for six years from the date of their appointment or until their successors are appointed and have qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the state, and he shall serve for a term of six years, or until his successor is appointed and qualified. Before entering upon the duties of his office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the Secretary of State. Upon the death, resignation, or removal of any member of the board, the Governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the board. Any member may be removed by the Governor for official misconduct, gross inefficiency/or moral unfitness.

"Section 4. POWERS AND DUTIES OF THE BOARD. (a) The board shall promulgate procedural rules and regulations, consistent with the provisions of this Act, to govern the conduct of its business and proceedings, and setting standards governing the connections to any public or private water supply by a landscape irrigator. Notwithstand-

ing any other provision of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary. At its first meeting it shall select one of its members who shall be a Kandscape Architect as chairman of the board and he shall serve as such chairman for such length of time not exceeding his term as a member of the board, as the board may prescribe. The chairman shall serve a term as prescribed by the rules and regulations of the board and may be removed for cause, his removal however, not to disqualify him from continuing as a member of the board. Four members . of the board shall constitute a quorum for the transaction of business. The board may adopt such reasonable rules and regulations of the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

"(b) The first board appointed under the provisions of this Act shall hold its first meeting within 30 days after the members have been qualified. It shall hold at least two regular meetings each year at such time and place as the chairman may designate. It may hold special meetings at such times and at such places as a majority of the board may deem necessary after giving reasonable notice thereof to all members. The board is authorized to employ an executive secretary who shall have such duties and responsibilities as the board may prescribe. The board is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salary of the secretary and all other employees of the board shall be fixed by the board and shall be paid out of the Texas State Board of Landscape

Architect's and Irrigator's Fund as provided for in this Act. salaries paid by the board shall be reasonable, comparable in amounts to salary paid by other departments of the state government to employees engaged in similar capacities. All persons employed by the board shall hold their positions at the pleasure of the board. Each member of the board shall receive as compensation for services performed in connection with his duties as such member a sum equal to his expenses actually incurred, provided however, said expenses shall not exceed the sum of \$25 per day, exclusive of travel expense. All payments to board members or employees and all expenses of the administration of this Act shall be paid out of the Texas State Board of Landscape Architect's and Irrigator's Fund provided for/herein, and no part of the expense of administering this Act shall ever be charged against the general funds of the State of Texas. The board shall arrange for such suitable. office space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expenses, provided however, that if space is available this agency shall be housed in one of the state office buildings of the State of Texas and such compensation as may be required by the administration of said office building shall be considered as a part of the administration expense of this Act. The board shall, as of August 31st of each year, after the passage of this Act make a written report to the Governor accounting for all receipts and disbursements under this Act.

"Section 5. QUALIFICATIONS FOR REGISTRATION. (a) From and after the effective date of this Act, no person shall represent himself or practice in any manner as a landscape architect, as defined herein, unless such person shall be licensed as provided herein. The following classes of persons shall be qualified for registration and receive a license:

other provisions of this Act, who submits evidence to the board that prior to the passage of this Act, that he is a resident of Texas and a citizen of the United States, possesses good moral character, and who has, for a period of not less than three years, regularly represented himself to be a landscape architect engaged in the practice of landscape architecture, as defined in this Act, shall be entitled to receive, upon taking the required examination, hereinafter sit out, a license to practice landscape architecture as a landscape architect.

"(2) Any person who is a resident of the State of Texas and a citizen of the United States over the age 21 years, possessing good moral character, and having or holding a degree from a school whose study of landscape architecture is approved by the board, or shall have had not less than seven years actual experience in the office of a licensed landscape architect, may apply for examination and such application shall be accompanied by a fee of \$50. The examination to be prepared by the members of the board and given by the board at its office in Austin, Travis County, Texas, or such other place as the board may determine or designate, provided however, that one-third of the board shall be present at each examination held and provided further that not more than three examinations may be held during any calendar year. The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability which will insure safety to the public welfare and the property rights. A candidate failing an examination may apply for reexamination at the expiration of six months, and shall be reexamined one time/without payment of additional fee.

"(b) No person shall engage in, work at, or conduct the business of landscape irrigation, or yard sprinkler construction or repairing in this state, and connect to any private or public, raw or potable water supply system unless such person is the holder of a valid certificate of registration as provided for by this section. The board shall issue certificates of registration to such persons of good moral character as have, by a uniform, reasonable examination, shown themselves fit, competent, and qualified to engage in the business, trade, or calling of a landscape irrigator. An examination for landscape irrigators shall be given at the same time and place and in the same manner as an examination for landscape architects is given under Subsection (a) of this section, and the fee for such examination shall be \$50.

"Section 6. RECIPROCAL PROVISIONS. The board may certify for registration without examination an applicant who is legally registered as a landscape architect or irrigator in any state or country whose requirements for registration are at least substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects or irrigators registered in this state. Such application shall be accompanied by a fee to be determined by the board.

"Section 7. CERTIFICATES OF REGISTRATION. All certificates of registration shall expire on the 31st day of August of each year, following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of that date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month

and set by the board. The fee for a landscape architect's certificate shall be not less than \$10 nor more than \$50. The fee for landscape irrigator's certificate shall be not more than \$100. Failure on the part of any registrant to renew his certificate annually, and by not later than August 31st, as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after August 31st shall be increased 10 percent for each month or fraction of a month that renewal payment is delayed; and provided further, that if such failure to renew shall continue for more than one year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under Section 5_N of this Act. All renewal certificates shall carry the same registration number as the original certificate.

"Section 8. REVOCATION AND REISSUANCE OF CERTIFICATES. (a) The board has the power to revoke the certificate of registration of any registrant who is charged with and found guilty of:

- "(1) Violations of provisions of this Act;
- "(2) The practice of any fraud or deceit in obtaining a certificate of registration;
- "(3) Any gross negligence, incompetency, or misconduct in the practice of landscape architecture or irrigation;
- "(4) Holding himself out to the public or any member thereof as an engineer or making use of the words 'engineer,' 'engineered,' 'professional engineer,' 'P.E.,' or any other terms tending to create the impression that such registrant is authorized to practice engineering or any other profession unless he is licensed under provisions of Texas Engineering Practice Act or the other applicable licensing law of this state.
 - "(5) Holding himself out to the public or any member thereof as

a surveyor or making use of the words 'surveyor,' 'surveyed,' 'registered public surveyor,' 'R.P.S.,' or any other terms tending to create the impression that such registrant is authorized to practice surveying or any other profession unless he is licensed under the provisions of the Registered Public Surveyors Act or the other applicable licensing law of this state.

"(b) In determining the truth of any such charges the board shall proceed upon sworn information furnished it by any reliable resident of this state; such information shall be in writing and shall be duly verfied by the person familiar with the facts therein charged, and three copies of the same shall be filed with the secretary of the board. Upon receipt of such information the board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the secretary of the board shall cause a copy of the board's order and of the information contained in the written charges to be served upon the accused at least 30 days before the date appointed in the order for the hearing. The accused may appear in person or by counsel or both, at the time and place named in the order and make his defense to the same. The board shall have the power, through its chairman or secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court, by subpoena issued over the signature of the secretary and the seal of the board.

"Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration of the board, as hereinabove authorized, shall have the right to file suit within 30 days within receiving notice of the board's order revoking his certificate of registration in the district in the county of his residence of the county in which the alleged events relied upon, and grounds for

revoking the certificates of registration; said suit to be filed against the board as defendant, and service of process may be had upon its chairman or secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the board, which issue shall be by trial de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

"Section 9. VIOLATIONS AND PENALTIES. After the effective date of this Act, any person, who represents himself to be a landscape architect or irrigator in this state without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own, the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining or assisting in attaining for another a certificate of registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than \$100 nor more than \$500, or be confined in jail for a period not to exceed three months, or both. Each day of such violation shall be a separate offense.

"The attorney general or his assistants shall act as legal advisor of the board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this shall not relieve the local prosecuting officers of any of their duties under the law as such.

"Section 10. FEES. Every landscape architect shall pay an annual fee as set by the board, but in no event to be less than \$10 nor more than \$50, as provided in Section 7 hereof. Every landscape

irrigator shall pay an annual fee as set by the board, but in no event shall it be more than \$100. The fee shall be due and payable on or before August 31 of each calendar year and shall become delinquent on September 1 of each year.

"All sums of money paid to the board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and placed in a special fund to be known as the 'Texas State Board of Landscape Architect's and Irrigator's Fund.' All expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the general appropriation bill."

Sec. 7. A person involved in the business of landscape irrigation or yard sprinkler construction at the time this Act takes effect may, within six months after the effective date of this Act, obtain a landscape irrigator's certificate of registration under Section 1 of this Act without being required to take an examination, but the person must pay the required license fee.

Sec. The provisions in Section 1 of this Act that a person who is involved in the business of landscape irrigation or yard sprinkler construction must have a landscape irrigator's certificate of registration will not take effect until six months after the effective date of this Act.

Sec. 8. The fact that the public health and welfare may be endangered by incompetent persons connecting into or onto a potable water supply, and by such reason may contaminate the drinking water of the citizens of this state creates a grave emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.

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Engrossing Clerk

By: Harris, Traeger McKnight

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S.B. No. 237

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and certification of landscape architects and landscape irrigators, as defined in this Act; amending Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes); providing penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10,

Chapter 457, Acts of the 61st Legislature, Regular Session, 1969

(Article 249c, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. As used in this Act:

- "(a) 'Landscape architect' means a person licensed to practice or teach landscape architecture in this state as provided herein.
- "(b) 'Landscape architecture' means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings,

including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include any services or functions within the definition of the practice of engineering, public surveying, or architecture as defined by the laws of this state.

- "(c) 'Board' means the Texas State Board of Landscape
 Architects, as created and provided for in this Act.
- "(d) 'Person' means a natural person except where otherwise specifically indicated.
- "(e) 'Secretary' means the executive secretary of the board as herein provided.
- "(f) 'Landscape irrigation system' means any assembly of component parts permanently installed with and for the controlled distribution of water for the purpose of irrigating any and all types of landscape vegetation, in any location, or for the purpose of dust reduction or erosion control.
- "(g) 'Landscape irrigator' means a person, corporation, partnership, or other legal entity duly licensed in this state under this Act, who has and shall maintain a regular place of business, and who, by himself, or through a person or persons in his employ, sells, designs, consults, installs, maintains, alters, repairs, or services any landscape irrigation system or yard sprinkler system including connections in and to any private or public potable water supply or water supply system.
 - "Section 2. EXEMPTIONS. "(a) The provisions of this Act

do not apply to nor affect laws relating to:

- "(1) A registered professional engineer, building designer, land surveyor, nurseryman, and architect (except landscape architect), respectively; [-]
- "(2) Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him as his home;
- "(3) Irrigation or yard sprinkler work done by anyone who is regularly employed as or acting as a maintenance man incidental to and in consideration with the business in which he is employed or engaged, and who does not engage in the occupation of landscape irrigator or yard sprinkler contractor or maintenance for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of landscape irrigator or yard sprinkler construction or maintenance for the general public; and landscape irrigation and yard sprinkler construction or maintenance done by persons engaged by any public service company in the laying, maintenance and operation of its service lines or mains and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances;
- "(4) Any temporary or portable watering devices such as garden hose, hose sprinklers, soaker hoses and agricultural irrigation;
 - "(5) Any agricultural irrigation, portable or solid set;

"(6) Irrigation or yard sprinkler work or any other services
authorized by this Act done by a licensed professional engineer
as defined by the laws of this state.

"(b) Every agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, grader or cultivator of land and any person making plans for property owned by himself is exempt from registration under the provisions of this Act, provided however, none of the foregoing shall use the title or term 'landscape architect,' or 'landscape irrigator,' in any sign, card, listing, advertisement or represent himself to be a 'landscape architect,' or a 'landscape irrigator,' without complying with the provisions of this Act.

"Section 3. TEXAS STATE BOARD OF LANDSCAPE ARCHITECTS.

"There is hereby created a Texas State Board of Landscape Architects, which board shall consist of six [three] members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the Governor with the advice and consent of the Senate; three members [7-and] shall be individuals who have been actively engaged in the practice of landscape architecture for a period of not less than 10 years prior to the date of their appointment, and three members shall be individuals who have been actively engaged in the practice of landscape irrigation who shall have had respectively at least a minimum of 10 years, eight years and six years experience as landscape irrigators.

"The membership of the board, except the initial [first

three] members, shall consist of three landscape architects and three landscape irrigators licensed [be-licensed-landscape architects] under the provisions of this Act. The three present members of the board shall serve and hold office pursuant to the terms of their respective appointments [Members-of-the-first-beard shall-be-appointed-within-90-days-after-this-Act-becomes-effective to-serve-the-following-terms]: one member for two years; one member for four years; and, one member for six years from the date of their appointment or until their successors are duly appointed and qualified. The Governor shall appoint three additional members to the board, who shall be landscape irrigators, on August 31, 1973, to serve the following terms: one member for two years; one member for four years; and one member for six years from the date of their appointment or until their successors are appointed and have qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the state, and he shall serve for a term of six years, or until his successor is appointed and qualified. Before entering upon the duties of his office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the Secretary of State. Upon the death, resignation, or removal of any member of the board, the Governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the board. Any member may be removed by the Governor for official misconduct, gross inefficiency

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or moral unfitness.

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"Section 4. POWERS AND DUTIES OF THE BOARD. (a) shall promulgate procedural rules and regulations [enly], consistent with the provisions of this Act, to govern the conduct of its business and proceedings, and setting standards governing the connections to any public or private water supply by a landscape irrigator. Notwithstanding any other provision of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary. At its first meeting it shall select one of its members who shall be a landscape architect as chairman of the board and he shall serve as such chairman for such length of time not exceeding his term as a member of the board, as the board may prescribe. The chairman shall serve a term as prescribed by the rules and regulations of the board and may be removed for cause, his removal however, not to disqualify him from continuing as a member of the board. Four [Two] members of the board shall constitute a quorum for the transaction of business. The board may adopt such reasonable rules and regulations of the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

The first board appointed under the provisions of this Act shall hold its first meeting within 30 days after the members have been qualified. It shall hold at least two regular meetings each year at such time and place as the chairman may designate. It may hold special meetings at such times and at such places as a majority of the board may deem necessary after giving reasonable notice thereof to all members. The board is authorized to employ an executive secretary who shall have such duties and responsibilities as the board may prescribe. is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salary of the secretary and all other employees of the board shall be fixed by the board and shall be paid out of the Texas State Board of Landscape Architect's and Irrigator's Fund as provided for in this Act. All salaries paid by the board shall be reasonable, comparable in amounts to salary paid by other departments of the state government to employees engaged in similar capacities. persons employed by the board shall hold their positions at the pleasure of the board. Each member of the board shall receive as compensation for services performed in connection with his duties as such member a sum equal to his expenses actually incurred, provided however, said expenses shall not exceed the sum of \$25 per day, exclusive of travel expense. All payments to board members or employees and all expenses of the administration of this Act shall be paid out of the Texas State Board of Landscape Architect's and Irrigator's Fund provided for

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herein, and no part of the expense of administering this Act shall ever be charged against the general funds of the State of Texas.

The board shall arrange for such suitable office space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expenses, provided however, that if space is available this agency shall be housed in one of the state office buildings of the State of Texas and such compensation as may be required by the administration of said office building shall be considered as a part of the administration expense of this Act.

The board shall, as of August 31st of each year, after the passage of this Act make a written report to the Governor accounting for all receipts and disbursements under this Act.

"Section 5. QUALIFICATIONS FOR REGISTRATION. (a) From and after [September-1st-fellewing] the effective date of this Act, no person shall represent himself or practice in [er-by] any manner as [te-be] a landscape architect, as defined herein, unless such person shall be licensed [registered] as provided herein. The following classes of persons shall be qualified for registration and receive a license:

"(1) [(a)] Any person over the age of 21 years, notwithstanding any other provisions of this Act, who submits evidence to the board that prior to the passage of this Act, that he is a resident of Texas and a citizen of the United States, possesses good moral character, and who has, for a period of not less than three years, regularly represented himself to be a

landscape architect engaged in the practice of landscape architecture, as defined in this Act, shall be entitled to receive, upon taking the required examination, hereinafter set out [without examination], a license to practice landscape architecture as a landscape architect[7-if-he-files-such-application-within-six months-of-this-Act-being-enacted-into-law---Such-application-shall be-accompanied-by-a-fee-of-\$50].

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"(2) [{b}] Any person who is a resident of the State of Texas and a citizen of the United States over the age 21 years, possessing good moral character, and having or holding a degree from a school whose study of landscape architecture is approved by the board, or shall have had not less than seven years actual experience in the office of a licensed landscape architect, may apply for examination and such application shall be accompanied by a fee of \$50. The examination to be prepared by the members of the board and given by the board at its office in Austin, Travis County, Texas, or such other place as the board may determine or designate, provided however, that one-third [a majerity] of the board shall be present at each examination held and provided further that not more than three examinations may be held during any calendar year. The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability which will insure safety to the public welfare and the property rights. candidate failing an examination may apply for reexamination at the expiration of six months, and shall be reexamined one time

without payment of additional fee.

- "(b) No person shall engage in, work at, or conduct the business of landscape irrigation, or yard sprinkler construction or repairing in this state, and connect to any private or public, raw or potable water supply system unless such person is the holder of a valid certificate of registration as provided for by this section. The board shall issue certificates of registration to such persons of good moral character as have, by a uniform, reasonable examination, shown themselves fit, competent, and qualified to engage in the business, trade, or calling of a landscape irrigator. An examination for landscape irrigators shall be given at the same time and place and in the same manner as an examination for landscape architects is given under Subsection (a) of this section, and the fee for such examination shall be \$50.
- "(c) Any landscape architect licensed under this Act shall not have to be licensed as a landscape irrigator in order to perform the necessary services for design, construction, repair and installation of any landscape irrigation system.

"Section 6. RECIPROCAL PROVISIONS. The board may certify for registration without examination an applicant who is legally registered as a landscape architect or irrigator in any state or country whose requirements for registration are at least substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects or irrigators registered in this state. Such

application shall be accompanied by a fee to be determined by the board.

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"Section 7. CERTIFICATES OF REGISTRATION. All certificates of registration shall expire on the 31st day of August of each year, following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of that date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of July or August of each year by payment of the fee as prescribed and set by the board. The fee for a landscape architect's certificate shall be not less than \$10 nor more than \$50. The fee for a landscape irrigator's certificate shall be not more than \$100. [7-but-in-no-event-to be-less-than-\$10-ner-mere-than-\$50-] Failure on the part of any registrant to renew his certificate annually, and by not later than August 31st, as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after August 31st shall be increased 10 percent for each month or fraction of a month that renewal payment is delayed; and provided further, that if such failure to renew shall continue for more than one year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under Section 5[7-6wbsection-(b)]

of this Act. All renewal certificates shall carry the same registration number as the original certificate.

"Section 8. REVOCATION AND REISSUANCE OF CERTIFICATES.

- "(a) The board has the power to revoke the certificate of registration of any registrant who is charged with and found guilty of:
 - "(1) Violations of provisions of this Act;
- "(2) The practice of any fraud or deceit in obtaining a certificate of registration;
- "(3) Any gross negligence, incompetency, or misconduct in the practice of landscape architecture or irrigation;
- "(4) Holding himself out to the public or any member thereof as an engineer or making use of the words 'engineer,' 'engineered,' 'professional engineer,' 'P.E.,' or any other terms tending to create the impression that such registrant is authorized to practice engineering or any other profession unless he is licensed under provisions of Texas Engineering Practice Act or the other applicable licensing law of this state.
- "(5) Holding himself out to the public or any member thereof as a surveyor or making use of the words 'surveyor,' 'surveyed,' 'registered public surveyor,' 'R.P.S.,' or any other terms tending to create the impression that such registrant is authorized to practice surveying or any other profession unless he is licensed under the provisions of the Registered Public Surveyors Act or the other applicable licensing law of this state.
 - "(b) In determining the truth of any such charges the board

shall proceed upon sworn information furnished it by any reliable resident of this state; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three copies of the same shall be filed with the secretary of the board. Upon receipt of such information the board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the secretary of the board shall cause a copy of the board's order and of the information contained in the written charges to be served upon the accused at least 30 days before the date appointed in the order for the hearing. The accused may appear in person or by counsel or both, at the time and place named in the order and make his defense to the same. The board shall have the power, through its chairman or secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court, by subpoena issued over the signature of the secretary and the seal of the board.

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"Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration of the board, as hereinabove authorized, shall have the right to file suit within 30 days within receiving notice of the board's order revoking his certificate of registration in the district in the county of his residence of the county in which the alleged events relied upon, and grounds for revocation, took place, to annul or vacate the order of the board revoking the certificates of registration;

said suit to be filed against the board as defendant, and service of process may be had upon its chairman or secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the board, which issue shall be by trial de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

"Section 9. VIOLATIONS AND PENALTIES. After the effective date of this Act [as-defined-in-Section-5-hereof;] any person who represents himself to be a landscape architect or irrigator in this state without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own, the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining or assisting in attaining for another a certificate of registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than \$100 nor more than \$500, or be confined in jail for a period not to exceed three months, or both. Each day of such violation shall be a separate offense.

"The attorney general or his assistants shall act as legal advisor of the board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this shall not relieve the local[7] prosecuting officers of any of their duties under the law as such.

"Section 10. FEES. Every landscape architect shall pay an annual fee as set by the board, but in no event to be less than \$10 nor more than \$50, as provided in Section 7 hereof.

Every landscape irrigator shall pay an annual fee as set by the board, but in no event shall it be more than \$100. The fee shall be due and payable on or before August 31 of each calendar year and shall become delinquent on September 1 of each year.

"All sums of money paid to the board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and placed in a special fund to be known as the 'Texas State Board of Landscape Architect's and Irrigator's Fund.' All expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the general appropriation bill."

- Sec. 2. A person involved in the business of landscape irrigation or yard sprinkler construction at the time this Act takes effect may, within six months after the effective date of this Act, obtain a landscape irrigator's certificate of registration under Section 1 of this Act without being required to take an examination, but the person must pay the required license fee.
- Sec. 3. The provisions in Section 1 of this Act that a person who is involved in the business of landscape irrigation or yard sprinkler construction must have a landscape irrigator's certificate of registration will not take effect until six months after the effective date of this Act.

Sec. 4. The fact that the public health and welfare may be endangered by incompetent persons connecting into or onto a potable water supply, and by such reason may contaminate the drinking water of the citizens of this state creates a grave emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and the rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

FORM A

COMMITTEE REPORT

Date 5/1/73

HONORABLE PRICE DANIEL, JR.

Speaker of the House of Representatives.

Sir:	_ 1 1		0		
We, your Committee on	_3+A-	3	H++41	RS	, to whom wa
referred	S.B.	No	237	, have had the	same under consideration
and beg to report back w	ith recommendatio	on that it (do de not) pass.		
The Committee recomme	m äs that thi s meas	ure be con	sidered f or t he (G	-Local Concent) Colonder	Record Vote (No
House sponsor of Senate	measure:			· · · · · · · · · · · · · · · · · · ·	
The measure was reported	•	y the follow	wing record vote:	Bibel	Truess
nay	sent, not voting			C	hairman

This ingasure proposes new law

By: Harris

Committee on State Affairs

BILL ANALYSIS

Background Information:

This legislation is meant to upgrade the profession of landscape irrigation to protect the public.

What the Bill Proposes to Do:

To amend Art. 249c, V.T.C.S., to make it applicable to "Landscape Irrigators," and to increase the membership of the State Board of Landscape Architects to six.

Section by Section Analysis:

Section 1. Amends Art. 249c, V.T.C.S., as follows:

- Sec. 1. Adds definitions for "landscape Irrigation System" and "landscape irrigator".
- Sec. 2. Adds the following exemptions to this Act: irrigation work done by the property owner or a maintenance man in the employ of the owner who is not an irrigator or contractor for the public, temporary watering devices, agriculture irrigation, or irrigation work done by a licensed professional engineer.
- Sec. 3. Increases the Texas State Board of Landscape Architects from three members to six.
- Sec. 4. Requires that the Chairman of the Board "shall be a landscape architect".
- Sec. 5. Adds a new subsection (b) forbidding any person from engaging—in landscape—irrigation without having a certificate of registration and enumerating the requirements for such certificate.
- Sec. 6. Includes "irrigators" in its reciprocal provision.
- Sec. 7. Provides for the landscape irrigator's certificate fee to be not more than \$100.
- Sec. 8. No change.
 - Sec. 9. No change.
 - Sec. 10. Provides for a landscape irrigator's annual fee not to exceed \$100, and changes the name of the special fund to the "Texas State Board of Landscape Arthitect's and Irrigator's Fund"
- Sec. 2. Allows a person already involved in landscape irrigation to obtain a certificate without an examination within six months.
- Sec. 3. Provides a six month period before the provisions of Section 1 requiring a certificate become effective.
- Sec. 4. Emergency Clause.

Summary of Committee Action:

SUMMARY OF COMMITTEE ACTION:

The Committee o	on <u>S4</u>	ata	FRAMIR	<u>s</u> poste	d notice	in
Accordance with Rule						
in a public hearing/	formal ma	octing c	on S	5] 7	, 1973.	
bill was referred to	Sub-com	nitte e ą	nd report	ed back	Favorably	to the
	amendment	(s) on			7 1973	. The
Committee voted on _	5	7	, 1973	by a re	cord voce	of
12 ayes and 2	nays, to	report	the bill	back to	the House	2
Favorably/#nfavorabl	y with th	e recom	mendation	that it	do/d o not	s pass ,
as amended.				•		
Was a ball nrows			222			•
This bill propo	Jed Hewel	-a₩ - 13 y - a	seang			• ,
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LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE

May 8, 1973

Honorable David Finney, Chairman Committee on State Affairs House of Representatives Austin, Texas 78701

In Re: Senate Bill No. 237

By: Harris, et al

Sir:

In response to your request and pursuant to House Rule VIII, Section 27, this office finds the fiscal implications of Senate Bill No. 237 (relating to the regulation and licensing of landscape irrigators and to the title, functions, and duties of the Texas State Board of Landscape Architects) to be as follows:

- 1. The bill makes no appropriation but authorizes legislative appropriations to implement the provisions of the bill.
- 2. Income collected under the provisions of the bill would be deposited in a special fund. The Board would set fees within maximums established by the bill. Therefore, no estimate of income is available.
- 3. The additional cost of implementing the provisions of the bill during each of the first five years following passage is estimated as follows:

Fiscal Year	Costs
1974	\$ 16,736
1975	17,358
1976	18,225
1977	19,136
1978	20,092

4. Similar annual costs will continue as long as the provisions of the bill are in effect.

Thomas M. Keel

Legislative Budget Director

Mg/18, 1973

S.B. No. 237

AN ACT

relating to the regulation and certification of landscape architects and landscape irrigators, as defined in this Act; amending Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, Chapter 457, Acts of the 61st Legislature, Regular Session, 1969 (Article 249c, Vernon's Texas Civil Statutes); providing penalties; and declaring an emergency.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10,

Chapter 457, Acts of the 61st Legislature, Regular Session, 1969

(Article 249c, Vernon's Texas Civil Statutes), are amended to read as follows:

"Section 1. DEFINITIONS. As used in this Act:

- "(a) 'Landscape architect' means a person licensed to practice or teach landscape architecture in this state as provided herein.
- "(b) 'Landscape architecture' means the performance of professional services such as consultation, investigation, research, preparation of general development and detailed design plans, studies, specifications, and responsible supervision in connection with the development of land areas where, and to the extent that, the principal purpose of such service is to arrange and modify the effects of natural scenery for aesthetic effect, considering the use to which the land is to be put. Such services concern the arrangement of natural forms, features, and plantings,

including the ground and water forms, vegetation, circulation, walks, and other landscape features to fulfill aesthetic and functional requirements but shall not include any services or functions within the definition of the practice of engineering, public surveying, or architecture as defined by the laws of this state.

- "(c) 'Board' means the Texas State Board of Landscape
 Architects, as created and provided for in this Act.
- "(d) 'Person' means a natural person except where otherwise specifically indicated.
- "(e) 'Secretary' means the executive secretary of the board as herein provided.
- "(f) 'Landscape irrigation system' means any assembly of component parts permanently installed with and for the controlled distribution of water for the purpose of irrigating any and all types of landscape vegetation, in any location, or for the purpose of dust reduction or erosion control.
- "(g) 'Landscape irrigator' means a person, corporation, partnership, or other legal entity duly licensed in this state under this Act, who has and shall maintain a regular place of business, and who, by himself, or through a person or persons in his employ, sells, designs, consults, installs, maintains, alters, repairs, or services any landscape irrigation system or yard sprinkler system including connections in and to any private or public potable water supply or water supply system.
 - "Section 2. EXEMPTIONS. "(a) The provisions of this Act

do not apply to nor affect laws relating to:

- "(1) A registered professional engineer, building designer, land surveyor, nurseryman, and architect (except landscape architect), respectively; [+]
- "(2) Irrigation or yard sprinkler work done by a property owner in a building or on premises owned or occupied by him as his home;
- "(3) Irrigation or yard sprinkler work done by anyone who is regularly employed as or acting as a maintenance man incidental to and in consideration with the business in which he is employed or engaged, and who does not engage in the occupation of landscape irrigator or yard sprinkler contractor or maintenance for the general public; construction, installation and maintenance work done upon the premises or equipment of a railroad by an employee thereof who does not engage in the occupation of landscape irrigator or yard sprinkler construction or maintenance for the general public; and landscape irrigation and yard sprinkler construction or maintenance done by persons engaged by any public service company in the laying, maintenance and operation of its service lines or mains and the installation, alteration, adjustment, repair, removal and renovation of all types of appurtenances, equipment and appliances;
- "(4) Any temporary or portable watering devices such as garden hose, hose sprinklers, soaker hoses and agricultural irrigation;
 - "(5) Any agricultural irrigation, portable or solid set;

"(6) Irrigation or yard sprinkler work or any other services authorized by this Act done by a licensed professional engineer as defined by the laws of this state.

"(b) Every agriculturist, agronomist, horticulturist, forester, gardener, contract gardener, garden or lawn caretaker, nurseryman, grader or cultivator of land and any person making plans for property owned by himself is exempt from registration under the provisions of this Act, provided however, none of the foregoing shall use the title or term 'landscape architect,' or 'landscape irrigator,' in any sign, card, listing, advertisement or represent himself to be a 'landscape architect,' or a 'landscape irrigator,' without complying with the provisions of this Act.

"Section 3. TEXAS STATE BOARD OF LANDSCAPE ARCHITECTS.

*There is hereby created a Texas State Board of Landscape Architects, which board shall consist of six [three] members, each of whom shall be a citizen of the United States and a resident of this state. Members of the board and their successors shall be appointed by the Governor with the advice and consent of the Senate; three members [7-and] shall be individuals who have been actively engaged in the practice of landscape architecture for a period of not less than 10 years prior to the date of their appointment, and three members shall be individuals who have been actively engaged in the practice of landscape irrigation who shall have had respectively at least a minimum of 10 years, eight years and six years experience as landscape irrigators.

"The membership of the board, except the initial [first

three] members, shall consist of three landscape architects and three landscape irrigators licensed [be-licensed-landscape architects] under the provisions of this Act. The three present members of the board shall serve and hold office pursuant to the terms of their respective appointments [Members-of-the-first-board shall-be-appointed-within-90-days-after-this-Aet-becomes-effective to-serve-the-following-terms]: one member for two years; one member for four years; and, one member for six years from the date of their appointment or until their successors are duly appointed and qualified. The Governor shall appoint three additional members to the board, who shall be landscape irrigators, on August 31, 1973, to serve the following terms: one member for two years; one member for four years; and one member for six years from the date of their appointment or until their successors are appointed and have qualified. Thereafter, at the expiration of the term of each member first appointed, his successor shall be appointed by the Governor of the state, and he shall serve for a term of six years, or until his successor is appointed and qualified. Before entering upon the duties of his office, each member of the board shall take and subscribe to the constitutional oath of office, and the same shall be filed with the Secretary of State. Upon the death, resignation, or removal of any member of the board, the Governor shall appoint a successor for the remainder of the term of such member who shall qualify in the same manner as other members of the board. Any member may be removed by the Governor for official misconduct, gross inefficiency

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"Section 4. POWERS AND DUTIES OF THE BOARD. (a) The board shall promulgate procedural rules and regulations [enly], consistent with the provisions of this Act, to govern the conduct of its business and proceedings, and setting standards governing the connections to any public or private water supply by a landscape irrigator. Notwithstanding any other provision of this Act, the board shall not have any power or authority to amend or enlarge upon any provision of this Act by rule or regulation or by rule or regulation to change the meaning in any manner whatsoever of any provision of this Act or to promulgate any rule or regulation which is in any way contrary to the underlying and fundamental purposes of this Act or to make any rule or regulation which is unreasonable, arbitrary, capricious, illegal, or unnecessary. At its first meeting it shall select one of its members who shall be a landscape architect as chairman of the board and he shall serve as such chairman for such length of time not exceeding his term as a member of the board, as the board may prescribe. The chairman shall serve a term as prescribed by the rules and regulations of the board and may be removed for cause, his removal however, not to disqualify him from continuing as a member of the board. Four [Twe] members of the board shall constitute a quorum for the transaction of business. The board may adopt such reasonable rules and regulations of the orderly conduct of its affairs as it may deem necessary, and may from time to time amend such rules and regulations.

The first board appointed under the provisions of this Act shall hold its first meeting within 30 days after the members have been qualified. It shall hold at least two regular meetings each year at such time and place as the chairman may designate. It may hold special meetings at such times and at such places as a majority of the board may deem necessary after giving reasonable notice thereof to all members. The board is authorized to employ an executive secretary who shall have such duties and responsibilities as the board may prescribe. The board is authorized to employ such other persons as it may deem necessary to administer the provisions of this Act. The salary of the secretary and all other employees of the board shall be fixed by the board and shall be paid out of the Texas State Board of Landscape Architect's and Irrigator's Fund as provided for in this Act. All salaries paid by the board shall be reasonable, comparable in amounts to salary paid by other departments of the state government to employees engaged in similar capacities. persons employed by the board shall hold their positions at the pleasure of the board. Each member of the board shall receive as compensation for services performed in connection with his duties as such member a sum equal to his expenses actually incurred, provided however, said expenses shall not exceed the sum of \$25 per day, exclusive of travel expense. All payments to board members or employees and all expenses of the administration of this Act shall be paid out of the Texas State Board of Landscape Architect's and Irrigator's Fund provided for

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herein, and no part of the expense of administering this Act shall ever be charged against the general funds of the State of Texas. The board shall arrange for such suitable office space and equipment as it may deem necessary and the rental for such office space and the cost of such equipment shall be considered administration expenses, provided however, that if space is available this agency shall be housed in one of the state office buildings of the State of Texas and such compensation as may be required by the administration of said office building shall be considered as a part of the administration expense of this Act. The board shall, as of August 31st of each year, after the passage of this Act make a written report to the Governor accounting for all receipts and disbursements under this Act.

"Section 5. QUALIFICATIONS FOR REGISTRATION. (a) From and after [September-1st-fellowing] the effective date of this Act, no person shall represent himself or practice in [er-by] any manner as [te-be] a landscape architect, as defined herein, unless such person shall be licensed [registered] as provided herein. The following classes of persons shall be qualified for registration and receive a license:

"(1) [(a)] Any person over the age of 21 years, notwithstanding any other provisions of this Act, who submits evidence to the board that prior to the passage of this Act, that he is a resident of Texas and a citizen of the United States, possesses good moral character, and who has, for a period of not less than three years, regularly represented himself to be a

landscape architect engaged in the practice of landscape architecture, as defined in this Act, shall be entitled to receive, upon taking the required examination, hereinafter set out [without examination], a license to practice landscape architecture as a landscape architect[7-if-he-files-such-application-within-six months-of-this-Act-being-enacted-into-law:--Such-application-shall be-accompanied-by-a-fee-of-\$50].

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"(2) [{b}] Any person who is a resident of the State of Texas and a citizen of the United States over the age 21 years, possessing good moral character, and having or holding a degree from a school whose study of landscape architecture is approved by the board, or shall have had not less than seven years actual experience in the office of a licensed landscape architect, may apply for examination and such application shall be accompanied by a fee of \$50. The examination to be prepared by the members of the board and given by the board at its office in Austin, Travis County, Texas, or such other place as the board may determine or designate, provided however, that one-third [a majerity] of the board shall be present at each examination held and provided further that not more than three examinations may be held during any calendar year. The scope of the examination and the methods of procedure shall be prescribed by the board with special reference to the applicant's ability which will insure safety to the public welfare and the property rights. A candidate failing an examination may apply for reexamination at the expiration of six months, and shall be reexamined one time

without payment of additional fee.

- "(b) No person shall engage in, work at, or conduct the business of landscape irrigation, or yard sprinkler construction or repairing in this state, and connect to any private or public, raw or potable water supply system unless such person is the holder of a valid certificate of registration as provided for by this section. The board shall issue certificates of registration to such persons of good moral character as have, by a uniform, reasonable examination, shown themselves fit, competent, and qualified to engage in the business, trade, or calling of a landscape irrigator. An examination for landscape irrigators shall be given at the same time and place and in the same manner as an examination for landscape architects is given under Subsection (a) of this section, and the fee for such examination shall be \$50.
- mot have to be licensed as a landscape irrigator in order to perform the necessary services for design, construction, repair and installation of any landscape irrigation system.

"Section 6. RECIPROCAL PROVISIONS. The board may certify for registration without examination an applicant who is legally registered as a landscape architect or irrigator in any state or country whose requirements for registration are at least substantially equivalent to the requirements of this state and which extends the same privilege of reciprocity to landscape architects or irrigators registered in this state. Such

application shall be accompanied by a fee to be determined by the board.

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"Section 7. CERTIFICATES OF REGISTRATION. All certificates of registration shall expire on the 31st day of August of each year, following their issuance or renewal and shall become invalid on that date unless renewed. It shall be the duty of the secretary of the board to notify every person registered under this Act of that date of expiration of his certificate and the amount of the fee that shall be required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of July or August of each year by payment of the fee as prescribed and set by the board. The fee for a landscape architect's certificate shall be not less than \$10 nor more than \$50. The fee for a landscape irrigator's certificate shall be not more than \$100. [7-but-in-no-event-to be-less-than-\$10-ner-mere-than-\$50.] Failure on the part of any registrant to renew his certificate annually, and by not later than August 31st, as required above shall not deprive such person of the right of renewal, but the fee to be paid for the renewal of a certificate after August 31st shall be increased 10 percent for each month or fraction of a month that renewal payment is delayed; and provided further, that if such failure to renew shall continue for more than one year after the date of expiration of the registration certificate, the applicant must reapply for registration and must qualify under Section 5[7-6ubsection-{b}]

of this Act. All renewal certificates shall carry the same registration number as the original certificate.

"Section 8. REVOCATION AND REISSUANCE OF CERTIFICATES.

- "(a) The board has the power to revoke the certificate of registration of any registrant who is charged with and found guilty of:
 - "(1) Violations of provisions of this Act;
- "(2) The practice of any fraud or deceit in obtaining a certificate of registration;
- "(3) Any gross negligence, incompetency, or misconduct in the practice of landscape architecture or irrigation;
- "(4) Holding himself out to the public or any member thereof as an engineer or making use of the words 'engineer,' 'engineered,' 'professional engineer,' 'P.E.,' or any other terms tending to create the impression that such registrant is authorized to practice engineering or any other profession unless he is licensed under provisions of Texas Engineering Practice Act or the other applicable licensing law of this state.
- "(5) Holding himself out to the public or any member thereof as a surveyor or making use of the words 'surveyor,' 'surveyed,' 'registered public surveyor,' 'R.P.S.,' or any other terms tending to create the impression that such registrant is authorized to practice surveying or any other profession unless he is licensed under the provisions of the Registered Public Surveyors Act or the other applicable licensing law of this state.
 - "(b) In determining the truth of any such charges the board

shall proceed upon sworn information furnished it by any reliable resident of this state; such information shall be in writing and shall be duly verified by the person familiar with the facts therein charged, and three copies of the same shall be filed with the secretary of the board. Upon receipt of such information the board, if it deems the information sufficient to support further action on its part, shall make an order setting the charges therein contained for hearing at a specified time and place, and the secretary of the board shall cause a copy of the board's order and of the information contained in the written charges to be served upon the accused at least 30 days before the date appointed in the order for the hearing. The accused may appear in person or by counsel or both, at the time and place named in the order and make his defense to the same. The board shall have the power, through its chairman or secretary, to administer oaths and compel the attendance of witnesses before it as in civil cases in the district court, by subpoena issued over the signature of the secretary and the seal of the board.

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"Any person who may feel himself aggrieved by reason of the revocation of his certificate of registration of the board, as hereinabove authorized, shall have the right to file suit within 30 days within receiving notice of the board's order revoking his certificate of registration in the district in the county of his residence of the county in which the alleged events relied upon, and grounds for revocation, took place, to annul or vacate the order of the board revoking the certificates of registration;

said suit to be filed against the board as defendant, and service of process may be had upon its chairman or secretary. The only issues to be tried in such cause shall be whether such person has been guilty as originally found by the board, which issue shall be by trial de novo, as that term is commonly used in connection with an appeal from the justice of the peace court to the county court, and the substantial evidence rule shall not apply.

"Section 9. VIOLATIONS AND PENALTIES. After the effective date of this Act [as-defined-in-Section-5-hereof7] any person who represents himself to be a landscape architect or irrigator in this state without being registered or exempted in accordance with the provisions of this Act, or any person presenting or attempting to use as his own, the certificate of registration or the seal of another, or any person who shall give any false or forged evidence of any kind to the board or to any member thereof in obtaining or assisting in attaining for another a certificate of registration, or any person who shall violate any of the provisions of this Act, shall be fined not less than \$100 nor more than \$500, or be confined in jail for a period not to exceed three months, or both. Each day of such violation shall be a separate offense.

"The attorney general or his assistants shall act as legal advisor of the board and shall render such legal assistance as may be necessary in enforcing and making effective the provisions of this Act, provided that this shall not relieve the local[7] prosecuting officers of any of their duties under the law as such.

"Section 10. FEES. Every landscape architect shall pay an annual fee as set by the board, but in no event to be less than \$10 nor more than \$50, as provided in Section 7 hereof.

Every landscape irrigator shall pay an annual fee as set by the board, but in no event shall it be more than \$100. The fee shall be due and payable on or before August 31 of each calendar year and shall become delinquent on September 1 of each year.

"All sums of money paid to the board under the provisions of this Act, shall be deposited in the treasury of the State of Texas, and placed in a special fund to be known as the 'Texas State Board of Landscape Architect's and Irrigator's Fund.' All expenditures for the administration and enforcement of this Act shall be in the amounts and for the purposes fixed by the general appropriation bill."

- Sec. 2. A person involved in the business of landscape irrigation or yard sprinkler construction at the time this Act takes effect may, within six months after the effective date of this Act, obtain a landscape irrigator's certificate of registration under Section 1 of this Act without being required to take an examination, but the person must pay the required license fee.
- Sec. 3. The provisions in Section 1 of this Act that a person who is involved in the business of landscape irrigation or yard sprinkler construction must have a landscape irrigator's certificate of registration will not take effect until six months after the effective date of this Act.

Sec. 4. The fact that the public health and welfare may be endangered by incompetent persons connecting into or onto a potable water supply, and by such reason may contaminate the drinking water of the citizens of this state creates a grave emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and the rule is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

	S.B. No. 237
President of the Senate	Speaker of the Hows
I hereby certify that S.B. No	
May 4, 1973, by the following vote	
	Sharp Schnabel
Thomas contists that C.D. N	Secretary of the Senate
I hereby certify that S.B. No.	•
May 18, 1973, by a non-record vote	
	Dorothy Tallman
	Chief Clerk of the House
	•
Approved:	
JUNE 16. 1973	
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S.B. No. 237	By Harry
	Harris
This would create a Texas State	Board of Landscape
Irrigation.	

MAY 4 1973 Received from the Senate Chief Clery, House of Representatives MAY 9 1973 HOUSE OF REPRESENTATIVES Chief Clery, House of Representatives

Filed with the Secretary of the Senate FEB 1 3 1973 NATURAL RESOURCES Read, referred to Committee on APR 26 1973Reported favorably. as am Reported adversely, with favorable Committee Substitute; Committee Substitute read first time. Ordered not printed._ MAY 4 1973 Senate and Constitutional Rules to permit consideration suspended by **23** yeas, 6 nays. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of 4 1973 ordered engrossed. Read second time and **4** 1973 Caption ordered amended to conform to body of bill. MAY 4 1973 Senate and Constitutional 3-Day Rules suspended by vote of yeas, 4 nays to place bill on third reading and final passage. 4 1973 Read third time and passed by OTHER ACTION:

MAY

REPORTED FAVORABLY SENT TO PRINTER

PRINTED, DISTRIBUTED AND

Engrossed

Sent to HOUSE

ENGROSSING CLERK

and passed to third reading by record you Clery, House of Representatives MAY 1 8 1973 HOUSE OF REPRESENTATIVES RETURNED TO SENATE MAY 1 8 1973